

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

[NO MONEYTARY REQUESTED]

JURY TRIAL DEMANDED
FCRP 38 & 39

MARCUS TATE AIS# 180664

Full name and prison number of plaintiff(s)

U.S. DISTRICT COURT
MIDDLE DISTRICT

INJUNCTION DEMANDED FCRP 65

CIVIL ACTION NO. 2:07 cv 292 -WKW
(To be supplied by Clerk of
U.S. District Court)

v.

Head defendant

ATTORNEY ~~MARC BASS~~ et, al

ASS, ATTORNEY, MARC A STARRETT

ATTORNEY ~~TROY KING~~

JUDGE THOMAS BAXTER et, al

D.A. ROBERT BOBBY KEAHEY et, al

Name of person(s) who violated
your constitutional rights.
(List the names of all the
persons.)

[FREEDOM DEMANDED]

CLAIMS

1. EXCESSIVE FORCES
2. ILLEGAL ARREST
3. FLASE IMPRISONMENT
4. KIDNAPPING
5. MALICIOUS PROSECUTION

I. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? YES (X) NO ()
- B. Have you begun other lawsuits in state or federal court relating to your imprisonment? YES (X) NO ()
- C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiff(s) ~~#####~~ MARCUS TATE~~#####~~Defendant(s) ATTORNEY GENERAL ~~#####~~ **MARC BASS et al**

ROBERT KEAHEY et, al

2. Court (if federal court, name the district; if state court, name the county)

UNITED STATE MIDDLE COURT MONTGOMERY ALABAMA

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3. Docket number _____
4. Name of judge to whom case was assigned _____
TRANFERED
5. Disposition (for example: Was the case dismissed?
Was it appealed? Is it still pending?) _____
AFTER TRANFERED PLAINTIFF FILED MOTION TO DISMISS
6. Approximate date of filing lawsuit _____ 2006
7. Approximate date of disposition _____

II. PLACE OF PRESENT CONFINEMENT SEE BRIEF ATTACHED

PLACE OF INSTITUTION WHERE INCIDENT OCCURRED ATTORNEY
GENERAL OFFICE et, al ESQ STATE OF ALABAMA MONTGOMERY COUNTY

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR
CONSTITUTIONAL RIGHTS.

- | | NAME | ADDRESS |
|----|--|----------------------|
| 1. | ATTORNEY GENERAL AL ET AL et, al | MARC BASS et, al esq |
| 2. | ASSISTANT ATTORNEY GENERAL MARC A. STARRETT et, al ESQ | |
| 3. | ATTORNEY ATTORNEY GENERAL MARC A. STARRETT ET AL et, al ESQ | TROY KING |
| 4. | JUDGE THOMAS JAMES BAXTER et, al esq | |
| 5. | D.A. ROBERT BOBBY KEAHEY ET, AL ESQ | |
| 6. | D.A. SPENCER WALKER ET, AL ESQ | |

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED NOV 1999 to
UP DATES MARCH 26/ 2007 KIDNAPPING & FALSE IMPRISONMENT

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION
THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:
EXCESSIVE FORCE, ILLEGAL ARREST, FALSE IMPRISONMENT,
GROUND ONE: KIDNAPPING AND FALSE IMPRISONMENT 13A-6-42 and

13A-6-43 and 18 USCS 1201 VIOLATING PLAINTIFF U.S. CIVIL
RIGHTS CONSTITUTION 4th, 5th, 6th, 8th, 9th, 13th, 14th, DUE PROCESS
OF LAW AND MALICIOUS PROSECUTION 28 USCS 2680(h)

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STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place and manner and person involved.)

PURSUANT TRIAL COURT TRANSCRIPT PAGE# 225 AND ATTACHED AFFIDAVITS OF C/O DEFENDANTS WITNESS IN ATTORNEY APPEALS COURT BRIEF

PAGE # 42 and 43 TRIAL COURT TRANSCRIPT CASE NO. CC-99-169-M

TIME WAS NOV/1999 to updates MARCH/26/2007

(A). TATE DID NOT TESTIFY(B). TATE PLEADED NOT GUILTY

GROUND TWO: THE STATE D.A. et,al esq USED COERCED CONFESSION
OF two Illegal witness who committed the crime THAT DID NOT HAVE
ANY KNOWLEDGE OF TATE BURGLARIZING NO HOME MAY/12/1998
SUPPORTING FACTS:

THE FACTS IS IN TRANSCRIPT CASE NO CC-99-169-M PAGE# 225
AND ATTACHED AFFIDAVITS IN APPELLEE BRIEF OF ALABAMA CRIMINAL
COURT APPEALS BRIEF PAGE# 42 and 43 AFFIDAVITS OF C/O
DEFENDANTS WITNESS LORENZO SMITH AND NAKIA MCCASKEY

GROUND THREE: ATTORNEY BEN KELLY ASK THE QUESTION IN

TRANSCRIPT PAGE# 225 DO YOU HAVE ANY KNOWLEDGE OF THIS CASE

SUPPORTING FACTS: CONTINUE: OTHER THAT WHAT YOU WAS TOLD

AND COERCED TO SAY BY THE DISTRICT ATTORNEY ROBERT KEAHEY

et,al NOV/2/1999

FACTS: BOTH C/O DEFENDANTS WITNESS STATED[NO] AND TATE
DID NOT BURGLARIZED NO HOME OF DANNY JOE SIMS AT JURY

TRIAL NOV/2/1999 PURSUANT 13A-6-42 and 13A-6-43 and

18 USCS 1201 and 28 USCS 2680(h) MALICIOUS PROSECUTION

CLAIMS

1. EXCESSIVE FORCES
2. ILLEGAL ARREST
3. FASE IMPRISON MENT
4. KIDNAPPING 3
5. MALICIOUS PROSECUTION

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VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU.
MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

ENTER AN FEDERAL COURT ORDER TO VACATE ABOLISH LIFE

SENTENCE CONVICTION SET ME FREE TO FAMILY

AND SET ME AN SPECIAL INTERVEIW WITH CNN WORLD NEWS OUTTA
ATLANTA GA, TO MAKE THIS CASE PUBLIC SO I CAN RECORD A
MOVE OF MY LIFE HISTORY IN THE FEDERAL COURT ROOM OF
U.S.M.D MONTGOMERY ALABAMA

Marceel O. Tate
Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true
and correct.

EXECUTED on

April 12 / 2007.
(Date)

Marceel O. Tate Ais#180664
Signature of plaintiff(s)

CLAIMS

1. EXCESSIVE FORCES
2. ILLEGAL ARREST
3. FLASE IMPRISONMENT
4. KIDNAPPING
5. MALICIOUS PROSECUTION

IN THE UNITED STATES MIDDLE DISTRICT COURT
STATE OF ALABAMA

MARCUS TATE
Aka, DRELIJAH J. MUHAMMAD
Plaintiff

vs.

MARC BASS ATTORNEY GENERAL et, al
DEFENDANTS esq et, al

CV CASE NO. _____

FREEDOM DEMANDED

JURY TRIAL DEMANDED
FCRP 38 and 39

INJUNCTION DEMANDED
FCRP 65 STATUTES P.

[NO, MONEYTARY RELIEF REQUESTED]

DEFENDANTS

PARTIES TO THIS CIVIL SUIT

ATTORNEY GENERAL TROY KING et, al
11 SOUTH UNION STREET
MONTGOMERY ALABAMA 36130

ASSISTANT ATTORNEY GENERAL MARC A. STARRETT
11 SOUTH UNION STREET
MONTGOMERY ALABAMA 36130

ASSISTANT ATTORNEY GENERAL MARC. S. BASS
11 SOUTH UNION STREET
MONTGOMERY ALABAMA 36130

JUDGE THOMAS BAXTER
P.O. BOX 912
GROVE HILL ALABAMA 36451

DISTRICT ATTORNEY ROBERT KEAHEY et al
P.O. BOX 850
GROVE HILL ALABAMA 36451

DISTRICT ATTORNEY SPENCER WALKER et, al
P.O. BOX 850
MONTGOMERY ALABAMA 36451

CLAIMS

1. EXCESSIVE FORCES
2. ILLEGAL ARREST
3. FLASE IMPRISONMENT
4. KIDNAPPING
5. MALICIOUS PROSECUTION

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CLAIMS

1. EXCESSIVE FORCES
2. ILLEGAL ARREST
3. FALSE IMPRISONMENT
4. KIDNAPPING
5. MALICIOUS PROSECUTION

PAGE# 2 of 2

CONTINUE PAGE

PLAINTIFF TO CIVIL SUIT :

LEGAL NAME

MARCUS TATE AIS# 180664
3800 GK FOUNTAIN CORRECTIONAL
ATMORE ALABAMA 36503

DRELIJAH J. MUHAMMAD
SSN# 424-96-3939
COMMERCIAL LICENCE# 6291505
B/M RACE DOB 06/07/75

WITNESS TO BE CALLED ON CIVIL SUIT

ATTORNEY BEN KELLY
P.O. BOX 188
JACKSON ALABAMA 36545
TEL# 251-246-4440

C/O DEFENDANT WITNESS LORENZO SMITH 334-636-0911
ASK FOR EDWARD MYLES HIS FATHER WILL GIVE HIS LOCATION

C/O DEFENDANT WITNESS NAKIA MCCASKEY 334-636-0911
ASK FOR LUTHER E MCCASKEY SHE WILL GIVE HIS LOCATION

RECORDS OF FACTS AND ISSUES PRESENT FOR REVEIW

- (1). TRANSCRIPT TRIAL RECORDS PAGE NO, 225 CASE NO. CC-99-169-M
ADDRESS LOCATION CLERK OFFICE JAY DUKES P.O. BOX 912
GROVE HILL ALABAMA
- (2). APPEAL BREIF EXHIBIT "B" PAGE NO. 42 and 43 AFFIDAVITS OF
C/O DEFENDANTS WITNESS LORENZO SMITH & NAKIA MCCASKEY
- (3). TATE PLEADED NOT GUILTY IN TRIAL CC-99-169-M NOV/2/1999
- (4). TATE PLEADED THE FIFTH AMENDMENT OF RIGHTS AND DID NOT
TESTIFY IN TRIAL COURT NOV/2/1999
- (5). BOTH C/O DEFENDANTS WITNESS WAS MADE TO COMMIT PERJURY
BY D.A. ROBERT KEAHEY et, al as Attorney Ben Kelly Put it
on notices in transcript RECORDS PAGE# 225
- (6). BOTH C/O DEFENDANTS WAS MADE TO COMMIT COERCED CONFESSION
- (7). EXHIBIT "A" BREIF OF ATTORNEY GENERAL TROY KING et, al

PAGE# 2 of 2

Pg# 75 & 76

Pg# 12

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1. EXCESSIVE FORCES
2. ILLEGAL ARREST
3. FALSE IMPRISONMENT
4. KIDNAPPING
5. malicious prosecution

GROUND AND CIVIL RIGHTS VIOLATIONS

- (1). THE PLAINTIFF STATE FACTS UNDER FCRP 56(e) BECAUSE THE ATTORNEY GENERAL TROY KING et,al IS FIGHTING TO KEEP AN INNOCENT MAN IN ADOC HE,S
- (a). AIDING AND ABIDING THE STATE OF ALABAMA TO ILLEGAL KIDNAPPING AND UNLAWFULLY IMPRISONMENT PURSUANT TITLE CODE 1975 Ala, 13A-6-42 and 13A-6-43 and 18 USCS 1201 CITING 28 USCS 2680(h) MALICIOUS PROSECUTION

MONEY

- (2). THE STATE OF ALABAMA HAS MADE ILLEGAL MONEY ON PLAINTIFF FOR THE PAST TEN YEARS PURSUANT Ala.R.CRIM.P 26.8(2) ALABAMA RULES OF COURT PROCEDURES

AFTER TH FACTS OF COERCED CONFESSION

- (3). THE FACTS WILL BE MADE KNOW THAT THE ATTORNEY GENERAL TROY KING et,al esq can be libel SEE exhibit "A" *Pg# 12* PAGE COVER SHEET BRIEF OF APPELLEE
- (4) THE PLAINTIFF ASK THE MIDDLE DISTRICT COURT OF MONTGOMERY ALABAMA TO CAREFULLY REVIEW THE FACTS ON PLAINTIFF BRIEF ON PAGE 2 of 2 AND COURT ORDER SUBPOENA ANY AND ALL RECORDS TO TURN OVER EVERY STONES *Pg# 2*
- (5). ATTORNEY BEN KELLY OF JACKSON ALABAMA ASK A QUESTION IN TRIAL COURT TRANSCRIPT RECORD PAGE NO. 225

QUESTION: TO BOTH C/ODEFENDANTS WITNESS, DO YALL HAVE ANY ACKNOWLEDGEMENT OF THIS CASE OTHER THAN WHAT YALL WAS COERCED AND MADE TO SAY DOWN STAIR IN THE OLD COUNTY JAIL OF CLARKE GROVE HILL AL,

ANSWER: BOTH C/O DEFENDANTS WITNESS [NO] AND PLAINTIFF TATE DID NOT COMMIT NO BUGLARY ON DANNY JOE SIMS HOME

- (6). THE STATE HAS VIOLATED IT OWN STATUTES PROCERDURES LAWS UNDER 13A-6-42 and 13A-6-43 *SEE CLAIMS 1-5 ABOVE*
- (7). MARCUS TATE PLAINTIFF DOES NOT BELONG IN NO CUSTODY OF THE STATE OF ALABAMA ADOC PRISON PURSUANT 28 USCS 2680(h) MALICIOUS PROSECUTION AND 18 USCS 1201 AND AL.R.CRIM.P 26.8(2)

- (8). BECAUSE PLAINTIFF WAS TAKEN OUTTA FREE SOCIETY FOR THE PAST TEN YEARS BY THE STATE OF ALABAMA KIDNAPPING AND UNLAWFULLY IMPRISONMENT UNDER 13A-6-42 and 13A-6-43 and 18 USCS 1201 and 28 USCS 2680(h)
- (a). IT VIOLATE THE PLAINTIFF CIVIL RIGHTS 4th/8/
5th AMENDMENT DUE PROCESS OF LAW AND
DEPRIVE HIM OF LIBERTY TO BE[FREE] and enjoying
the full Benifits in free society
- (9). THE STATE OF ALABAMA REPRESENTATIVES HAS DEPRIVED PLAINTIFF OUTTA HIS CIVIL RIHGTS 14th AMENDMENT BY
(a). ILLEGALL KIDNAPPING SEE CLAIMS 1-5
(b). UNLAWFULLY IMPRISONMENT HIM
SEE EXHIBIT "A" & "B" ATTACHED AND SUBPOENA TRANSCRIPT PAGE NO. 225 and SUBPOENA WITNESS AND ATTORNEY BEN KELLY
(c). PLAINTIFF DID NOT RECIVE EQUAL PROTECTION OF LAW OF DUE PROCESS OF LAW UNDER THE U.S. CIVIL RIGHTS CONSTITUTIONAL
- (10). THESE ACTS THE STATE OF ALABAMA HAS COMMITTED UNDER MALICIOUS PROSECUTION 28 USCS 2680(h) AND 18 USCS 1201 AND 13A-6-42 and 13A-6-43 CITING AL.R.CRIM.P 26.8(2)
(a). HAS INFLICTED THE PLAINTIFF WITH CRUEL UNUSUAL PUNISHMENT FOR THE PAST TEN YEARS
BEHIND PRISON WALL ILLEGALL FROM AUGUST 1998
UPDATE APRIL/2007
- (11). THE 13th AMENDMEND HAS ALSO BEEN VIOLATED OF PLAINTIFF
(a). IT STATED PLAINTIFF MUST AND SHALL BE DUTYLY CONVICTION OF A CRIME TO BE PUT IN LEGAL SLAVERY TO DO HARD LABOR IN ADOC PRISON
- (12). PURSUANT 8th AMENDMENT NOR CRUEL UNUSUAL PUNISHMENT NOR EXECESSIVE FINES SHALL NOT BE IMPOSED WITHOUT JUST CAUSE OF LAW SEE CLAIMS 1-5
- (13). THE PLAINTIFF ASK THE UNITED STATES MIDDLE DISTRICT COURT
FEDERAL JUDGE TO NOT LET THIS CASE LEAVE THIS COURT IN MONTGOMERY ALABAMA ,AND TO FIND ALL FACTS TO GIVE THE PLAINTIFF RELIEF BACK HOME TO HIS FAMILY AND FRIENDS AND LOVE ONES

CLAIMS

PAGE# 4 of 4

1. EXCESSIVE FORCES
2. ILLEGAL ARREST
3. FIASE IMPRISONMENT
4. KIDNAPPING
5. MALICIOUS PROSECUTION

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IN THE UNITED STATES MIDDLE DISTRICT COURT
STATE OF ALABAMA

MARCUS TATE
PLAINTIFF
vs.

*

CV. NO. 2:07cv292-WKW

*

MARC BASS ATTORNEY GENERAL et, al
DEFENDANTS

*

*

NOTICES TO THE FEDERAL JUDGES ADOC STAFF REFUSED TO NOTARIZE

SIGNED: PLAINTIFF:

Marcus O. Tate
MARCUS TATE/ DRELIJAH MUHAMMAD ASI# 180664

SIGNED WITNESS:

Robert Lewis Brown
Robert Brown AIS NO. 125529

CERTIFICATION OF SERVICE

I SWEAR I HAVE SERVED THE CLERK OF COURT AND OTHER PARTIES BY
THE U.S. VISA MAILING SERVICE HAND DELIVERY BY POST MASTER
GENERAL DAY OF 2nd MONTH APRIL 2007

Marcus O. Tate
3800 GK FOUNTAIN CORR
ATMORE ALABAMA 36503

FCRP 65 STATUTES PROCEDURES

(A). THE PLAINTIFF GIVES THE FEDERAL JURISDICTION TO EXCISE FULL CUSTODY OF THIS CASE AND ENTER AN INJUNCTION COURT ORDER TO SET PLAINTIFF FREE FROM ILLEGALL CUSTODY

ROB MY LIFE

(B). THE PLAINTIFF ASK THAT TROY KING et,al be SUBPOENA TO COURT SO I CAN LOOK THEM IN THE FACE TO ASK WHY DID THEY ROB MY LIFE IN ILLEGAL CUSTODY FOR THE PAST TEN YEARS

CONCLUSION

THE PLAINTIFF GIVES THIS CIVIL CASE BACK TO THE RIGHT JURISDICTION AND ASK THE FEDERAL JUDGE TO EXCISE FULL POWER IN GIVING RELIEF

THE PLAINTIFF ASK THAT THIS CASE DO NOT BE TRANFERED TO NO UNITED STATES SOUTHERN DISTRICT COURT BECAUSE HIS APPEALS IS IN THE OFFICE OF ATTORNEY GENERAL TROY KING et,al

MR.KING IS FIGHTING TO KEEP THE PLAINTIFF IN PRISON ILLEGAL SEE EXHIBIT"A" & "B" ATTACHED

CERTIFICATION OF SERVICE

I SWEAR I HAVE SERVED THE OFFICE OF TROY KING et,al and the SAME HAS BEEN PLACED ON THE UNITED STATED MIDDLE DISTRICT CLERK OFFICE DONE BY VISA MAIL PREPAID HAND DELIVERY THIS DAY 2nd MONTH APRIL 2007

Marcus O. Tate

MARCUS TATE AIS# 180664
3800 GK FOUNTAIN CORRECTIONAL
ATMORE ALABAMA 36503

STATE OF ALABAMA
NOTARY PUBLIC

[AFFIDAVIT]

I SWEAR I HAVE STATED ALL FACTS AND GIVING EXHIBITS AND WITNESS AND PRAY THEY BE COURT ORDER SUBPOENA TO COURT

I ALSO SWEAR I,AM OVER THE AGE 21 AND CAN STAND TRIAL TO ALLEGES ISSUES OF FACTS

Marcus O. Tate

SWORN TO AND SUBSCRIBED BEFORE ME THIS DAY 2nd APRIL 2007

NOTARY: _____ COMMISSION EXPIRES: _____

Page # 5 OF 5

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**COURT OF CRIMINAL APPEALS
STATE OF ALABAMA**

Lane W. Mann
Clerk
Gerri Robinson
Assistant Clerk



P. O. Box 301555
Montgomery, AL 36130-1555
(334) 242-4590
Fax (334) 242-4689

March 26, 2007

CR-06-0905

Marcus Orlanda Tate v. State of Alabama (Appeal from Clarke Circuit Court:
CC99-169.61)

Notice of Filing of Brief

You are hereby notified that the following action was taken in the above cause:

Appellee's Brief Filed.

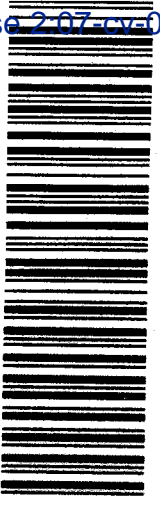
**Lane W. Mann, Clerk
Court of Criminal Appeals**

cc: Marcus Orlanda Tate, Pro Se
Hon. Marc Bass, Asst. Attorney General

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In the COURT of CRIMINAL APPEALS
OF ALABAMA

CLERK OF COURT
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

MARCUS ORLANDA TATE,

Appellant,

v.

STATE OF ALABAMA,

Appellee.

On Appeal From the Circuit Court of
Clarke County, Alabama
(CC-99-0169.61)

BRIEF OF APPELLEE

Troy King
Attorney General

Marc A. Starrett
Assistant Attorney General

Marc S. Bass
Assistant Attorney General
Counsel of Record *

State of Alabama
Office of the Attorney General
11 South Union Street
Montgomery, Alabama 36130
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mbass@ago.state.al.us

March 26, 2007

Troy King et al
BRIEF
EX "A"

EXHIBIT
"A"
ATTORNEY GENERAL
BRIEF

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STATEMENT REGARDING ORAL ARGUMENT

The State of Alabama does not request oral argument, because the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Ala. R. App. P. Rule 34(a)(3).

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TABLE OF CASES AND AUTHORITIES

Cases

<u>Arthur v. State</u> , 820 So. 2d 886, 889 (Ala. Crim. App. 2001)	13
<u>Ex parte Baker</u> , 667 So. 2d 50, 51 (Ala. 1995)	13
<u>Ex parte Seymour</u> , No. 1050597, 2006 WL 1793747 (Ala. Jun. 30, 2006)	10
<u>Ex parte Seymour</u> , No. 1050597, 2006 WL 1793747 at *3 (Ala. Jun. 30, 2006)	11
<u>Kirby v. State</u> , 652 So. 2d 797, 798 (Ala. Crim. App. 1994)	14
<u>United States v. Cotton</u> , 535 U.S. 625, 630-31, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002)	11
<u>Wallace v. State</u> , [Ms. CR-05-0351] 2006 WL 2788969 (Ala. Crim. App. Sep. 29, 2006)	13
<u>Woolf v. McGaugh</u> , 175 Ala. 299, 303, 57 So. 754, 755 (1911)	11

Other Authorities

Ala. Code 1975,	
§ 12-11-30	11
§ 13A-11-61(b)	11
§ 13A-7-6(c)	11
Ala. Const.1901,	
Amend. No. 328, § 6.04(b),	11
Black's Law Dictionary 867	
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Rules

Ala. R. Cr. P.

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STATEMENT OF THE CASE AND FACTS

Marcus Orlanda Tate appeals from the January 26, 2007, denial of his Rule 32 petition by the Clarke County Circuit Court, the Honorable James T. Baxter, presiding, challenging his second degree burglary conviction. (C. 1)

Tate's Rule 32 petition was filed with the circuit clerk of Clarke County on November 15, 2006. (C. 16-24) Tate claimed that his sentence of life in prison was directly due to coerced confessions of his two co-defendants, that the Clarke County Circuit Court was without jurisdiction to impose a life sentence, newly discovered evidence existed that required the Clarke County Circuit Court to "vacate[] and abolish" his life sentence, that his indictment was defective and void as he did not "comprehend what he was charge[d] with," his attorney waived his preliminary hearing without his consent, and that he was rendered ineffective assistance of counsel by his counsel's "failure to object under the State of Alabama Constitution 6th, 5th, 8th, 9th, [and] 13th amendments." (C. 18)

The State, through the Clarke County District Attorney's Office, filed a response to Tate's claims,

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asserting Tate's claims were non-jurisdictional and, as such, were precluded (1) as untimely under Alabama Rules of Criminal Procedure Rule 32.2(c); and (2) not sufficiently specific, offering no specific facts or evidence which supported his allegations pursuant to Alabama Rules of Criminal Procedure Rule 32.6. (C. 25-28)

On January 26, 2007, the Clarke County Circuit court summarily dismissed Tate's Rule 32 petition, stating that his claims were precluded as untimely, pursuant to Alabama Rules of Criminal Procedure 32.2(c) and failed to sufficiently plead his claim under Alabama Rules of Criminal Procedure Rule 32.6. (C. 29-30)

This appeal follows.

STATEMENT OF THE ISSUE

Did the trial court abuse its discretion in dismissing
Tate's Alabama Rules of Criminal Procedure Rule 32
petition?

STANDARD OF REVIEW

A petitioner in a Rule 32 proceeding has the burden of pleading and proving his allegations. Eddins v. State, 581 So. 2d 574 (Ala. Crim. App. 1991); Ala. R. Crim. P. Rule 32.3. The standard applied by this court when reviewing the denial of a Rule 32 petition that alleges newly discovered evidence is whether the court abused its discretion in denying the petition. Taylor v. State, 97 So. 2d 802 (Ala. 1957); Miles v. State, 624 So. 2d 700 (Ala. Crim. App. 1993); Elliott v. State, 601 So. 2d 1118 (Ala. Crim. App. 1992). The trial court's judgment is reviewed only for an abuse of discretion, and will be affirmed if correct for any reason. Grady v. State, 831 So. 2d 646, 648 (Ala. Crim. App. 2001), citing Reed v. State, 748 So. 2d 231, 233 (Ala. Crim. App. 1999). It is not an abuse of discretion to deny a petition that is filed beyond the statute of limitation and raises no jurisdictional grounds. Rule 32.(c); Arthur v. State, 820 So. 2d 886, 889 (Ala. Crim. App. 2001).

SUMMARY OF THE ARGUMENT

Tate contends that the trial court abused its discretion when it summarily dismissed his Rule 32 petition. Tate's claims are precluded.

Essentially, Tate's sole claim, on appeal of the dismissal of this Rule 32 petition, is that the Clarke County Circuit Court was without jurisdiction to render his sentence of life in prison, as he was innocent of the crime upon which he was charged. Tate's Rule 32 argument, however, attacks the substance of the evidence presented against him, and is not a jurisdictional claim of an illegal sentence, as he cites in his brief. Appellant's Brief 5. Therefore, because Tate's claim is non-jurisdictional, it is subject to the Alabama Rules of Criminal Procedure Rule 32 preclusionary bars. As such, Tate's claim is precluded as untimely, could have been raised at trial or on appeal, has not met his burden of proof, is insufficiently pleaded, and has failed to state a claim.

To the extent Tate has relied on "newly discovered evidence" to base his claim, Tate has made no showing that the facts upon which he relies were not known by him or his

counsel at the time of trial or sentencing or in time to file a post-trial motion and could not have been discovered through the exercise of reasonable diligence.

Therefore, Tate's claim was due to be denied as precluded and meritless.

ARGUMENT

The Trial Court Did Not Abuse Its Discretion In Summarily Dismissing Tate's Alabama Rules of Criminal Procedure Rule 32 Petition.

Tate argues, on appeal, that the trial court erroneously dismissed his Rule 32 petition as he claimed the "district attorney use[d] coerced confession[s] from both C/O [sic] defendants" and therefore was without jurisdiction to render his life in prison sentence. Appellant's Brief 5. However, Tate's Rule 32 claim, although couched as a jurisdictional claim, is actually an attack on the substance of the evidence presented against him. Appellant's Brief 5. Therefore, because Tate's claim is non-jurisdictional, it was subject to the Alabama Rules of Criminal Procedure Rule 32 preclusionary bars. As such, Tate's claim was precluded as untimely, could have been raised at trial or on appeal, did not meet his burden of proof, was insufficiently pleaded, and failed to state a claim.

The Alabama Supreme Court, in Ex parte Seymour, No. 1050597, 2006 WL 1793747 (Ala. Jun. 30, 2006) held:

Jurisdiction is "[a] court's power to decide a case or issue a decree." Black's Law Dictionary 867 (8th ed.2004). Subject-matter jurisdiction concerns a court's power to decide certain types

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of cases. Woolf v. McGaugh, 175 Ala. 299, 303, 57 So. 754, 755 (1911) (" 'By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought.' " (quoting Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 316, 19 L.Ed. 931 (1870))). That power is derived from the Alabama Constitution and the Alabama Code. See United States v. Cotton, 535 U.S. 625, 630-31, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002) (subject-matter jurisdiction refers to a court's "statutory or constitutional power" to adjudicate a case). In deciding whether Seymour's claim properly challenges the trial court's subject-matter jurisdiction, we ask only whether the trial court had the constitutional and statutory authority to try the offense with which Seymour was charged and as to which he has filed his petition for certiorari review.

Under the Alabama Constitution, a circuit court "shall exercise general jurisdiction in all cases except as may be otherwise provided by law." Amend. No. 328, § 6.04(b), Ala. Const.1901. The Alabama Code provides that "[t]he circuit court shall have exclusive original jurisdiction of all felony prosecutions . . ." § 12-11-30, Ala. Code 1975. The offense of shooting into an occupied dwelling is a Class B felony. § 13A-11-61(b), Ala. Code 1975. As a result, the State's prosecution of Seymour for that offense was within the circuit court's subject-matter jurisdiction, and a defect in the indictment could not divest the circuit court of its power to hear the case.

Ex parte Seymour, No. 1050597, 2006 WL 1793747 at *3 (Ala.

Jun. 30, 2006) (emphasis added). Alabama Code (1975)

Section 13A-7-6(c) provides, "Burglary in the second degree is a Class B felony." Consequently, "the trial court had the constitutional and statutory authority to try the

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offense with which [Tate] was charged." See Ex parte Seymour, 2006 WL 1793747 at *3. Therefore, the trial court had jurisdiction to try Tate, and his claim is non-jurisdictional in nature and subject to the preclusionary bars of Alabama Rules of Criminal Procedure Rule 32. See Ala. R. Cr. P. Rule 32.1.

Tate was sentenced on December 12, 1999. Tate filed a direct appeal of his conviction, which was affirmed and a certificate of judgment was issued on July 11, 2000. Alabama Rules of Criminal Procedure Rule 32.2(c) then provides for a one-year period of time to timely file an Alabama Rules of Criminal Procedure Rule 32 petition. The time for Tate to timely file a Rule 32 petition raising his non-jurisdictional claims, therefore, expired on July 11, 2001. Tate's petition was filed on November 15, 2006, which was beyond that applicable time period. Accordingly, since his claims were not jurisdictional, Tate's claims were subject to the preclusionary bar of Rule 32.2(c) as untimely filed. See Alabama Rules of Criminal Procedure Rule 32.2(c). When a Rule 32 petition is subject to the statute of limitations, it should be procedurally barred for that reason. Ex parte Baker, 667 So. 2d 50, 51 (Ala.

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1995); Arthur v. State, 820 So. 2d 886, 889 (Ala. Crim. App. 2001).

Tate's claim, as a non-jurisdictional claim, is also subject to the preclusionary grounds of Alabama Rules of Criminal Procedure Rules 32.2(a)(3) and 32.2(a)(5) -- the claim could have been raised at trial or upon appeal. See Wallace v. State, [Ms. CR-05-0351] 2006 WL 2788969 (Ala. Crim. App. Sep. 29, 2006) ("Because this claim is not jurisdictional, it is precluded...by Rules 32.3(a)(3) and (5), Ala. R. Crim. P., because the claim could have been, but was not, raised at trial and on appeal.") Since Tate did not raise this issue at trial or upon direct appeal, he was precluded from raising these claims.

Alabama Rules of Criminal Procedure Rule 32.3 states that "[t]he petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief." Rule 32.6(b), states that "[t]he petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall

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not be sufficient to warrant any further proceedings."

Tate has failed to plead facts sufficient to entitle him to relief. He has also failed to include a clear and specific statement under which relief was sought.

To the extent Tate relies on the grounds of "newly discovered evidence" in the form of "coerced confession from both c/o defendants," that their testimony was false, this Court has consistently held that, "[t]he standard applied by this court when reviewing the denial of a Rule 32 petition that alleges newly discovered evidence is whether the court abused its discretion in denying the petition. Taylor v. State, 97 So. 2d 802 (Ala. 1957); Miles v. State, 624 So. 2d 700 (Ala. Cr[im]. App. 1993); Elliott v. State, 601 So. 2d 1118 (Ala. Cr[im]. App. 1992)." Kirby v. State, 652 So. 2d 797, 798 (Ala. Crim. App. 1994).

Alabama Rules of Criminal Procedure Rule 32.1(e) provides that, in order to properly assert a claim of "newly discovered evidence," Tate must show that the facts he relied upon,

(1) ... were not known by [Tate] or [his] counsel at the time of trial or sentencing or in time to file a posttrial motion pursuant to Rule 24 ... and could not have been discovered by any of those

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times through the exercise of reasonable diligence;

(2) The facts are not merely cumulative to other facts that were known;

(3) The facts do not merely amount to impeachment evidence;

(4) If the facts had been known at the time of trial or of sentencing, the result probably would have been different; and,

(5) The facts establish that the petitioner is innocent of the crime for which the petitioner was convicted or should not have received the sentence that the petitioner received.

Ala. R. Cr. P. Rule 32.1(e) (emphasis added). Tate has not asserted that the "coerced" testimony from his co-defendants was "^{Transcript Pg # 225}not known by [Tate] ^{Transcript Pg # 225}or [his] counsel at the time of trial ^{and Transcript Pg # 225}or sentencing or in time to file a posttrial motion pursuant to Rule 24 ... and could not have been discovered by any of those times through the exercise of reasonable diligence." Ala. R. Cr. P. Rule 32.1(e). Additionally, this Court has also held that, when "a witness who has testified at a trial makes an affidavit that such testimony is false, (little credence) ordinarily can be placed in the affidavit." King v. State, 574 So. 2d 921, 925 (Ala. Crim. App. 1990), quoting People v. McGraughan, 197 Cal. App. 2d 6, 17 (1961)" Kirby v.

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State, 652 So. 2d 798. Therefore, it is clear that Tate has not properly raised a claim of "newly discovered evidence" and that the trial court did not abuse its discretion in its denial of Tate's Rule 32 claims.

CONCLUSION

Therefore, for the foregoing reasons, the trial court's judgment is due to be affirmed.

Respectfully submitted,

Troy King
Attorney General

Marc A. Starrett
Assistant Attorney General
By-

A handwritten signature in black ink, appearing to read 'M. Bass', is written over a horizontal line.

Marc S. Bass (BAS 020)
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 26th of March, 2007, I did serve a copy of the foregoing, by placing the same in the United States Mail, first class, postage prepaid and addressed as follows:

Marcus Orlanda Tate
AIS# 180664
3800 GK Fountain Correctional Facility
Atmore, Alabama 36503



Marc S. Bass
Assistant Attorney General

ADDRESS OF COUNSEL:
Office of the Attorney General
Criminal Appeals Division
11 South Union Street
Montgomery, Alabama 36130-0152
(334) 242-7300

249695

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Defendant

COURT OF CRIMINAL APPEALS NO. _____

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF CLARKE COUNTY, ALABAMA

CIRCUIT COURT NO. CC-1999-169.61

CIRCUIT JUDGE JAMES T BAXTER

Type of Conviction / Order Appealed From: RULE 32 PETITION

Sentence Imposed: RULE 32 PETITION DENIED

Defendant Indigent: ☒ YES ☐ NO

MARCUS ORLANDA TATE AIS # 180664

NAME OF APPELLANT

J-1-79-B

(Appellant's Attorney) (Telephone No.)

3800 GK FOUNTAIN

(Address) (City) (State) (Zip Code)

ATMORE, AL 36503

(City) (State) (Zip Code)

V.

STATE OF ALABAMA

NAME OF APPELLEE

(late represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

*Exhibit
"B"
CRIMINAL COURT
APPEALS
300 DEXTER AVENUE
MONTGOMERY ALA
BRIEF
32*

INDEX

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00001

STATE OF ALABAMA

VS.

CASE NO. CC-1999-169.61

MARCUS ORLANDA TATE

ORGANIZATION OF COURT

RULE 32 FILED

11/15/2006

STATE'S RESPONSE

01/26/2007

RULE 32 DENIED

01/26/2007

NOTICE OF APPEAL

01/25/2007

CIRCUIT JUDGE

JAMES T BAXTER

COURT REPORTER

STEVE BRADLEY

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ACRO370 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 1999 000169.61
OFF: ANP CASE ACTION SUMMARY
PA 1 CIRCUIT CRIMINAL
===== RUN DATE: 03/08/2007
IN THE CIRCUIT COURT OF CLARKE JUDGE: JTB

STATE OF ALABAMA VS TATE MARCUS ORLANDA #1806
3800 GK FOUNTAIN CORRECTI
CASE: CC 1999 000169.61
ATMORE, AL 36503 0000

DOB: 06/07/1975 SEX: M RACE: B HT: 5 08 WT: 200 HR: BLK EYES: BRO
SSN: 424963939 ALIAS NAMES:

CHARGE01: RULE 32-FELONY CODE01: RULE LIT: RULE 32-FELONY TYP: F #: 001
OFFENSE DATE: AGENCY/OFFICER: 0160000

DATE WAR/CAP ISS: DATE ARRESTED:
DATE INDICTED: DATE FILED: 11/15/2006
DATE RELEASED: DATE HEARING:
BOND AMOUNT: \$.00 SURETIES:

DATE 1: DESC: TIME: 0000
DATE 2: DESC: TIME: 0000

TRACKING NOS: CC 1999 000169 00 / /
DEF/ATY: TYPE: TYPE:

00000

00000

PROSECUTOR: WALKER SPENCER BRENT

===== JTH CSE: CC199900016900 CHK/TICKET NO: GRAND JURY:
COURT REPORTER: SID NO: 0000000000
DEF STATUS: PRISON DEMAND: OPER: RDG

TRANS DATE	ACTIONS, JUDGEMENTS, AND NOTES	OPE
11/15/2006	ASSIGNED TO: (JTB) JAMES T BAXTER (AR01)	RDF
11/15/2006	CHARGE 01: RULE 32-FELONY/#CNTS: 001 (AR01)	RDF
11/15/2006	INITIAL STATUS SET TO: "P" - PRISON (AR01)	RDF
11/15/2006	FILED ON: 11/15/2006 (AR01)	RDF
11/15/2006	CASE ACTION SUMMARY PRINTED (AR08)	RDF
11/20/2006	DEFT FILES AFFIDAVIT AGREEMENT NOTICES	ALB
12/12/2006	ADDR1 CHANGED FROM: STATON CORRECTIONAL CENT (AR01)	ALB
12/12/2006	HOME CITY CHANGED FROM: ELMORE (AR01)	ALB
12/12/2006	ADDR2 CHANGED FROM: P O BOX 56 ---- D32T (AR01)	ALB
01/26/2007	STATE'S RESPONSE FILED	RDF
01/26/2007	JUDGE'S ORDER FILED	RDF
01/26/2007	DISPOSITION JUDGE ID CHANGED FROM: TO: JTB	RDF
01/26/2007	CHARGE 01 DISPOSED BY: PET DENIED ON: 01/26/2007	RDF
01/26/2007	CHARGE 01: RULE 32-FELONY/#CNTS: 001 (AR10)	RDF
01/29/2007	APPEAL DATE CHANGED FROM: 00/00/0000 (AR11)	ANP
01/29/2007	PROSECUTOR CHANGED FROM: (AR11)	ANP
01/29/2007	ATYW TYPE CHANGED FROM: (AR11)	ANP

35

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00003

ACRO370 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 1999 000169.61
 OPER: RDF CASE ACTION SUMMARY
 PA 1 CIRCUIT CRIMINAL
 IN THE CIRCUIT COURT OF CLARKE RUN DATE: 11/15/2006
 STATE OF ALABAMA VS JUDGE: JTB
 CASE: CC 1999 000169.61 TATE MARCUS ORLANDA #1806
 STATON CORRECTIONAL CENTE
 P O BOX 56 D32T
 ELMORE, AL 36025 0000
 DOB: 06/07/1975 SEX: M RACE: B HT: 5 08 WT: 200 HR: BLK EYES: BRO
 SSN: 424963939 ALIAS NAMES:
 CHARGE01: RULE 32-FELONY CODE01: RULE LIT: RULE 32-FELONY TYP: F #: 001
 OFFENSE DATE: AGENCY/OFFICER: 0160000
 DATE WAR/CAP ISS: DATE ARRESTED:
 DATE INDICTED: DATE FILED: 11/15/2006
 DATE RELEASED: DATE HEARING:
 BOND AMOUNT: \$.00 SURETIES:
 DATE 1: DESC: TIME: 0000
 DATE 2: DESC: TIME: 0000
 TRACKING NOS: CC 1999 000169 00 /
 DEF/ATY: TYPE: TYPE:
 00000 00000
 PROSECUTOR: WALKER SPENCER BRENT

WITH CSE: CC199900016900 CHK/TICKET NO: GRAND JURY:
 COURT REPORTER: SID NO: 0000000000
 DEF STATUS: PRISON DEMAND:
 OPER: RDF
 ACTIONS, JUDGEMENTS, AND NOTES
 11/15/2006 ASSIGNED TO: (JTB) JAMES T BAXTER (AR01) OPE
 11/15/2006 CHARGE 01: RULE 32-FELONY/#CNTS: 001 (AR01) RDF
 11/15/2006 INITIAL STATUS SET TO: "P" - PRISON (AR01) RDF
 11/15/2006 FILED ON: 11/15/2006 (AR01) RDF
 11/15/2006 CASE ACTION SUMMARY PRINTED (AR08) RDF

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PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

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(Pursuant to Rule 32,
Alabama Rules of Criminal Procedure)

Case Number

CC 99 169
ID YR NUMBER

IN THE _____ CIRCUIT _____ COURT OF GROVE HILL ALABAMA

MARCUS TATE AIS# 180664 vs. DISTRICT ATTORNEY ROBERT KEAHEY
Petitioner (Full Name) Respondent

[Indicate either the "State" or,
if filed in municipal court, the
name of the "Municipality"]

Prison Number 180664 Place of Confinement ADOC

County of conviction CLARKE

**NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY
THE ACCOMPANYING INSTRUCTIONS.**

- Name and location (city and county) of court which entered the judgment of conviction or sentence under attack GROVE HILL ALABAMA CLARKE COUNTY
- Date of judgment of conviction NOVEMBER 2nd/1999
- Length of sentence LIFE SENTENCE / WITHOUT JURISDICTION
- Nature of offense involved (all counts) BUGLARY 2nd Degree
FACTS: BOTH C/O DEFENDANTS WITNESS WILL STATE I NEVER COMMITTED
NO BUGLARY MAY 12/1998 and they was MADE TO COMMIT PERJURY IN
TRIAL BY ROBERT KEAHEY AND SHERIFF OFFICER LARRY COLSTON et al
- What was your plea? (Check one)
 - Guilty _____
 - Not guilty X AND PLEAD THE 5th AMENDMENT
 - Not guilty by reason of mental disease or defect _____
 - Not guilty and not guilty by reason of mental disease or defect _____

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6. Kind of trial: (Check one)

(a) Jury X

(b) Judge only _____

7. Did you testify at the trial?

Yes _____

No X PLEAD THE FIFTH AMENDMENT

8. Did you appeal from the judgment of conviction?

Yes X

No _____

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court ALABAMA CRIMINAL COURT APPEAL(2) Result DENIED APPEAL GROUNDS BY MICHAEL W. ARSTEAD(3) Date of result 2002

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court NO OTHER COURT NO APPEAL(2) Result N/A

(3) Date of result _____

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court _____

(2) Result _____

(3) Date of result _____

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00006

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes _____ No X

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court NO COURT

(2) Nature of proceeding _____

(3) Grounds raised _____

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No N/A

(5) Result _____

(6) Date of result _____

- (b) As to any second petition, application, or motion, give the same information:

(1) Name of court NO COURT

(2) Nature of proceeding _____

(3) Grounds raised _____

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No N/A

(5) Result _____

(6) Date of result _____

- (c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court NO COURT

(2) Nature of proceeding N/A 00007(3) Grounds raised N/A

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No X

(5) Result _____

(6) Date of result _____

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes _____ No X(2) Second petition, etc. Yes _____ No X(2) Third petition, etc. Yes _____ No X**ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.**

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

MY LAWYER TOLD ME NOT TOO CAUSE I DON'T HAVE NO RIGHTTO APPEAL AFTER MY JURY TRIAL BY ORAL STATEMENT HE MADE

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUND OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

A2) A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

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(2) Conviction obtained by use of coerced confession.

- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

X B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

X E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

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The facts do not merely amount to impeachment evidence; and

If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____ No X

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court NONE

(b) Result _____

(c) Date of result NONE
(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____ No X

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15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:
- (a) At preliminary hearing ATTORNEY WAIVED PRELIMINARY ILLEGALLY
WITHOUT DEFENDANT CONSENT OF BEEN PRESENT AT COURT
- (b) At arraignment and plea ATTORNEY WAIVED ARRAIGNMENT ILLEGALLY
- (c) At trial BEN KELLY P.O. BOX 188 JACKSON ALABAMA 36545
- (d) At sentencing ATTORNEY BEN KELLY ABOVE
- (e) On appeal MICHAEL WAYNE ARMISTEAD
- (f) In any post-conviction proceeding NO POSTCONVICTION PROCEEDING
- (g) On appeal from adverse ruling in a post-conviction proceeding N/A
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
 Yes _____ No X
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
 Yes _____ No X
- (a) If so, give name and location of court which imposed sentence to be served in the future: _____
N/A
- (b) And give date and length of sentence to be served in the future: _____
- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
 Yes N/A No _____
18. What date is this petition being mailed?
NOVERENBER 13/2006

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

00011

PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on Nov 12 2006
(Date)

[Signature] 180664
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 12th day of November 2006

[Signature]
Notary Public

OR *

ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on Nov 12 2006
(Date)

[Signature] 180664
Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, _____.

Notary Public

Name and address of attorney representing petitioner
in this proceeding (if any)

Marcell O. Tate 180664
STATION Correctional
P.O. Box 56
Elmore Ala. 36025

Marcell O. Tate

* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the

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INMATE REQUEST SLIP

Name Margus TATE Quarters D-3- Date 11-13-06AIS # 180664

() Telephone Call () Custody Change () Personal Problem
 () Special Visit () Time Sheet (X) Other 6 Mnth
PMOD

Briefly Outline Your Request - Then Drop In Mail Box

I'm Requesting for
A 6 months PMOD
Attached and Attached
documents filled out

Do Not Write Below This Line - For Reply Only

Approved

Denied

Pay Phone

Collect Call

Request Directed To: (Check One)

() Warden () Deputy Warden () Captain
 () Classification Supervisor () Legal Officer - Notary Public () Record Office

N176

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00013

Case Number

CC 99 169-M
ID YR NUMBER
(To be completed
by Court Clerk)

IN FORMA PAUPERIS DECLARATION

In the Circuit Court of Clarke County
[Insert appropriate court]

Marcus Tate or Tate
(Petitioner)

vs.

STATE OF Alabama
(Respondent(s))

1-26-07
Grinstead
Chamberlain, Judge

DECLARATION IN SUPPORT OF REQUEST TO PROCEED
IN FORMA PAUPERIS

I, Marcus O. Tate, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes _____ No X

a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

N/A

b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

N/A

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes _____ No X

b. Rent payments, interest, or dividends?

Yes _____ No X

c. Pensions, annuities, or life insurance payments?

Yes _____ No X

d. Gifts or inheritances?

Yes _____ No X

e. Any other sources?

Yes _____ No X

FILED
CLERK'S OFFICE
CLARKE COUNTY, ALABAMA
2006 NOV 15 AM 9:24
WAYNE BRUNSON
CIRCUIT CLERK

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00014

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

N/A

3. Do you own cash, or do you have money in a checking or savings account?

Yes _____

No ☒

(Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

N/A

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes _____

No ☒

If the answer is "yes", describe the property and state its approximate value.

N/A

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

N/A

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on November 13th 2006
(Date)

Marcelo O. Talo
Signature of Petitioner

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ 0.24 on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said Staten C.F. institution:

See attached

11/13/06
DATE

[Signature]
AUTHORIZED OFFICER OF INSTITUTION

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STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS
STATON CORRECTIONAL FACILITY

AIS #: 180664

NAME: TAITE, MARCUS

AS OF: 11/13/2006

MONTH	# OF DAYS	AVG DAILY BALANCE	MONTHLY DEPOSITS
NOV	17	\$0.00	\$0.00
DEC	31	\$0.00	\$0.00
JAN	31	\$0.00	\$0.00
FEB	28	\$0.00	\$0.00
MAR	31	\$0.00	\$0.00
APR	30	\$0.00	\$0.00
MAY	31	\$171.41	\$530.92
JUN	30	\$184.05	\$100.00
JUL	31	\$0.56	\$0.00
AUG	31	\$0.24	\$0.00
SEP	30	\$0.24	\$0.00
OCT	31	\$0.24	\$0.00
NOV	13	\$0.24	\$0.00

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6. STATE STRICT PROOF THEREOF
6. SUBPOENA COURT ORDER REQUESTED
7. RELIEF SOUGHT
7. CERTIFICATION OF SERVICE
7. BRIEF RULE 32 NOTARIZED UNDER NOTARY PUBLIC

CC- COPIES FORWARD
ATTORNEY GENERAL OFFICE
TROY KING
ALABAMA SUPREME COURT
CHIEF JUSTICE
ALABAMA GOVERNOR,S OFFICE
CHIEF OF STATE etal
BOB RILEY STAFF TEAM

FILED
CIRCUIT CLERK'S OFFICE
CLARENCE POWELL, ALABAMA
2006 NOV 15 AM 9:24
WATIE BRUNSON
CIRCUIT CLERK

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3. ARCRP 32.9(a)(b)(c)(d)
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5. ALABAMA CONSTITUTION VIOLATIONS OF DEFENDANT
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(A)

00017

IN THE CIRCUIT COURT OF CLARKE COUNTY
1st JUDICIAL CIRCUIT OF ALABAMA

MARCUS TATE
APPELLANT

*

VS.

*

CC-99-169-M
CR-99-0781

STATE OF ALABAMA
APPELLEE

*

C/O DEFENDANTS WITNESS

*

(A).LORENZO SMITH
(B).NAKIA McCASKEY

[BRIEF]

POST CONVICTION
RULE 32 PURSUANT

MARCUS TATE /OR/ DRELIJAH J. MUHAMMAD IIND
AIS# 180664
334-567-2221
P.O. BOX 56
ELMORE ALABAMA 36025

APPEALING/ NOVEREMBER - 13th-2006

SEVERING LIFE

SENTENCE NOVEREMBER 2nd/1999

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STATEMENTS OF FACTS

[ARGUMENTS]

- (A). THE CONSTITUTION OF THE UNITED STATES OR OF THE STATE OF ALABAMA REQUIRES A NEW TRIAL, A NEW SENTENCE PROCEEDING, OR OTHER RELIEF

[COERCED CONFESSION]

- (B). CONVICTION OF LIFE SENTENCE ATTAINED BY USE OF COERCED CONFESSION BY THE STATE OF ALABAMA DISTRICT ROBERT KEAHEY AND SHERIFF OFFICER LARRY COLSTON COERCED BOTH C/O DEFENDANTS WITNESS LORENZO SMITH AND NAKIA McCASKEY
FACTS: TRANSCRIPT RECORDS OF COURT CC-99-169-M

ILLEGALLY JURISDICTION

- (C). THE CLARKE COUNTY CIRCUIT COURT WAS WITHOUT JURISDICTION AND STATE OF ALABAMA DISTRICT ATTORNEY ROBERT KEAHEY TO RENDER THE JUDGMENT OR TO IMPOSE THE CONVICTION AND SENTENCE OF LIFE IN CASE CC-99-169-M

[NEWLY DISCOVERED EVIDENCE]

- (D). NEWLY DICOVERED EVIDENCE EXIST TO REQUIRES THE STATE OF ALABAMA CLARKE COUNTY CIRCUIT TO VACATED LIFE AND ABOLISH THE CONVICTION FOLLOWING EVIDENCE TO WIT.

DEFECTIVELY INDICTMENT

- (1). INDICTMENT WAS DEFECTIVELY AND VOID FAILURE TO HAVE THE LAUNAGE TO MAKE DEFENDANT TO COMPREHEND WHAT HE WAS CHARGE WITH PURSUANT ARCRP 13.(a)(b)(c) AND TITLE CODE OF ALABAMA 1975 15-8-25

WAVIED PRELIMINARY HEARING ILLEGAL

- (2). PRELIMINARY HEARING PURSUANT ARCRP 5.1(a) THE ATTORNEY WAVIED DEFENDANT PRELIMINARY HEARING WITHOUT [CONSENT] OF DEFENDANT BEENING PRESENT AT CLARKE COUNTY CIRCUIT COURT
FACTS: SEE COURT FILES CASE ACTION SUMMARY SHEET

COUNSEL WAS INEFFECTIVE ASSISSTANCE

- (E). BEN KELLY WAS INEFFECTIVE ASSISSTANCE FOR FAILURE TO OBJECT UNDER THE STATE OF ALABAMA CONSTITUTION AMENDMENT 6th. 5th. 8th. 9th. 14th, 13th AMENDMENTS

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00019

AFFIDAVIT STATEMENTS OF BOTH C/O DEFENDANTS WITNESS

DEFENDANT
JURISDICTION ISSUES OF ALABAMA

(F). THE DEFENDANT IS ONLY RAISING JURISDICTION ISSUES IN THIS RULE 32 POST CONVICTION AND CAN NOT BE PROCEDURE BARRED FORM NO COURT OF CLARKE COUNTY

(G). HOWEVER THE STATE OF ALABAMA MADE THREATEN BOTH C/O DEFENDANTS WITNESS LORENZO SMITH AND NAKIA McCASKEY MALICE TO COMMITT PERJURY IN CASE NO. CC-99-169-M TO OBTAIN THIS ILLEGALLY CONVICTION AND SENTENCE OF LIFE UPON DEFENDANT MARCUS TATE

FACTS: SEE STATEMENT OF ATTORNEY BEN KELLY IN TRANSCRIPT RECORDS

STATED: NAKIA McCASKEY DO YOU HAVE ANY KNOWLEDGE OF THIS CASE] OTHER THAN WHAT YOU AND MR. SMITH WAS TOLD BY DISTRICT ATTORNEY ROBERT KEAHEY AND SHERIFF OFFICE R] LARRY COLSTON DOWN STAIR NOVEREMBER 2nd 1999

[EVIDENTIARY HEARING REQUESTED]

(H). THE DEFENDANT REQUEST FOR EVIDENTIARY HEARING UNDER ARCRP 32.9(a)(b)(c)(d)

TO RESOLVE THIS CASE AS SOON AS POSSIBLE FOR CIVIL TRIAL PROCEEDING AND CNN NEWS 2007 SPECIAL REPORT INTERVEIW ATLANTA GA

- (1). CRIMINAL CHARGES BY THE STATE UPON D.A. ROBERT KEAHEY
- (2). 1st DEGREE KIDNAPPING 13A- 18.USCS 1201
- (3). 1st DEGREE PERJURY 13A
- (4). TAMPERING WITH WITNESS TO OBTAIN PERJURY FOR AN ILLEGALLY CONVICTION
- (5). DESTRUCTION OF ALABAMA JUSTICE BY ABUSING THE POWER OF ALABAMA JUDICIAL SYSTEM ILLEGALLY 13A

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00020

ARGUMENTS OF DEFENDANT

- (I). THE STATE OF ALABAMA CIRCUIT COURT LACKS JURISDICTION OVER DEFENDANT MARCUS TATE IN CASE NO. CC-99-169-M

FOLLOWING REASON AND RESOURCES.

- (1). NEWLY DISCOVERED EVIDENCE EXIST SEE TRANSCRIPT RECORDS (ex.A)
- (2). THE INDICTMENT WAS DEFECTIVELY AND VOID AND WHEREFORE THE CLARKE COUNTY CIRCUIT COURT WAS WITHOUT JURISDICTION TO RENDER CONVICTION AND SENTENCE UNDER ARCP 13.2(a)(b)(c) AND ARCP 13.(1)(a)(b)(c)

[THE INDICTMENT JUST STATED BUGLARY 2nd DEGREE]
FACTS: SEE [ex.A] INDICTMENT COURT FILES

AND PURSUANT TITLE CODE OF ALABAMA 1975 15-8-25

AN INDICTMENT MUST STATE THE FACTS CONSTITUTING THE OFFENSE IN ORDINARY AND CONCISE LANGUAGE, WITHOUT PROLIXITY OR REPETITION, IN SUCH A MANNER AS TO ENABLE A PERSON OF COMMON UNDERSTANDING TO KNOW WHAT IS INTENDED AND WITH THAT DEGREE OF CERTAINTY WHICH WILL ENABLE THE CLARKE COUNTY CIRCUIT COURT, ON CONVICTION, TO PRONOUNCE THE PROPER JUDGMENT. IN NO CASE ARE THE WORDS "FORCE OF ARMS" OR CONTRARY TO THE FORM OF THE STATUTE" NECESSARY

FACTS SEE CASE PRELIMINARY HEARING

- (J). ACTION SUMMARY WHEREFORE THE ATTORNEY BEN KELLY WAS INEFFECTIVELY ASSISTANCE OF COUNSEL FOR WAVING THE DEFENDANT MARCUS TATE PRELIMINARY HEARING ILLEGALLY WITHOUT PROPERLY [CONSENT] OR OF DEFENDANT BEENING PRESENTLY AT CLARKE COUNTY CIRCUIT COURT PURSUANT ARCP 5.1.(a)

FACTS: STATED [RIGHT TO PRELIMINARY HEARING

A DEFENDANT CHARGED BY THE COMPLAINT WITH THE COMMISSION OF A FELONY MAY, WITHIN THIRTY(30) DAYS OF ARREST, DEMAND A PRELIMINARY HEARING. IF DEMANDED, THE PRELIMINARY HEARING SHALL COMMENCE IN THE DISTRICT COURT OF CLARKE COUNTY WITHIN TWENTY-ONE (21) DAYS FOLLOWING THE DEMAND FOR PRELIMINARY HEARING UNLESS THE COMPLAINT WAS DISMISSED

COERCED CONFESSION OBTAINED

- (K). THE STATE DISTRICT ATTORNEY ROBERT KEAHEY WAS WITHOUT JURISDICTION TO USE ILLEGALLY FORCED COERCED CONFESSION OF LORENZO SMITH AND NAKIA McCASKEY TO OBTAIN AN ILLEGAL CONVICTION AND SENTENCE ON MARCUS TATE NOVEMBER 2/1999

ARGUMENTS CONTINUE

(L).

ALABAMA CONSTITUTION VIOLATIONS

STATEMENT: THE STATE OF ALABAMA DISTRICT ATTORNEY ROBERT KEAHEY ABUSED ITS DISTRESSONAL POWER ILLEGAL AND VIOLATED MANY DEFENDANT ALABAMA CONSTITUTION AMENDMENT OF CIVIL RIGHTS UNDER ESTABLISHMENT GUARANTEE UNDER 1901.

RIGHT TO A FAIR TRIAL

(M). THE DEFENDANT MARCUS TATE DID NOT HAVE A RIGHT TO A FAIR TRIAL BY USE OF COERCED CONFESSION BY THE STATE OF ALABAMA DISTRICT ATTORNEY ROBERT KEAHEY etal
PURSUANT 5th,6th,4th, 8th,9th, 13th,14th

(1). NEITHER SLAVRY NOR INVOLUNTARY SERVITUDE, EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED, SHALL EXIST WITHIN THE UNITED STATES, OR ANY PLACE SUBJECT TO THEIR JURISDICTION

RIGHTS TO EQUAL PROTECTION OF LAWS

(N). THE DEFENDANT WAS DENIED EQUAL PROTECTION OF LAWS AND DUE PROCESS OF LAW BY THE DISTRICT ATTORNEY ROBERT KEAHEY
NOVEMBER 2nd 1999
PURSUANT 5th,6th, 8th,14th AMENDMENTS OF RIGHTS

FACTS: THE STATE USED COERCED CONFESSION AND PERJURY TO OBTAIN A ILLEGAL CONVICTION AGAINST THE STATE OF ALABAMA CONSTITUTION LAWS

DUE PROCEEDS OF LAW

(O). THE DEFENDANT WAS DEPRIVED OUTTA DUE PROCEEDS OF LAW BY THE STATE OF ALABAMA DISTRICT ATTORNEY etal BY IMPOSING A ILLEGAL CONVICTION WITHOUT JURISDICTION OF ALABAMA LAWS TO A [INNOCENT] CITIZEN MARCUS TATE CASE NO. CC-99-169-M

CRUEL UNUSUAL PUNISHMENT WAS INFLICTED UPON THE DEFENDANT

(P). CRUEL UNUSUAL PUNISHMENT WAS INFILCTED UPON THE DEFENDANT BY THE STATE OF ALABAMA DISTRICT ATTORNEY CASTING A ILLEGAL CONVICTION AND SENTENCE WITHOUT JURISDICTION

(1) DEFECTIVELY INDICTMENT (2) WAVING PRELIMINARY HEARING ILLEGALLY (3) COERCED CONFESSION (4) INEFFECTIVELY ASSISTANCE OF TRIAL COURT COUNSEL

(5)

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[STATE STRICT PROOF]
COURT ORDER REQUESTED SUBPOENA

ISSUED

(Q). THE DEFENDANT MOVE FOR AN COURT ORDER SUBPOENA ISSUED
TO BRING STRICT PROOF THEREOF UNDER ARCP 32.9(a)(b)(c)(d)
[EVIDENTIARY HEARING]

(R). THE DEFENDANT MAKE MOTION OF THE COURT FOR A SUBPOENA
ISSUED BY SIGNATURE

DONE THIS DAY 13th NOV 2006

STATE

STRICT PROOF

Marcus O. Tate
MARCUS TATE AIS# 180664

(S). THE DEFENDANT ASK THE COURT TO COURT ORDER THE FOLLOWING
PEOPLES THAT WAS IN TRIAL NOVEREMBER 1999

LORENZO SMITH C/O DEFENDANT WITNESS EDWARD MILE SON
334-636-0911 Lower PEACH TREE ALABAMA 36751

NAKIA McCASKEY ROOSEVELT RUSSUEL ROAD LOWER PEACH TREE ALABAM
36751 COUNTY ROUTE 1 OFF TO ROOSEVELT RUSSUEL ROAD

ATTORNEY BEN KELLY P.O. BOX 188 JACKSON ALABAMA 36545
251-246-4440

DISTRICT ATTORNEY ROBERT KEAHEY P.O. BOX 850 GROVE HILL AL

SHERIFF OFFICE LARRY COLSTON WILCOX COUNTY SHERIFF DEPT
CAMDEN ALABAMA ARE THE TASK FORCE DEPT DEA

(T). THE PARTIES ARE NEEDED FOR STRICT PROOF AND QUESTIONS
UNDER THIS POST CONVICTION RULE 32 AND ARCP 32.9(a)(b)
(c)(d)

DONE THIS DAY 13th NOVEREMBER 2006

Marcus O. Tate
MARCUS TATE AIS# 180664

CC- Clerk
CC- D.A.

00024

IN THE CLARKE COUNTY DISTRICT ATTORNEY OFFICE
STATE OF ALABAMA

MARCUS TATE
DEFENDANT

*

vs.

CC-99-169-M

STATE OF ALABAMA
PLAINTIFF

*

\$1. MILLION DOLLARS
[THE MONEY WILL BE USED
TO OPENING A CONSTRUCTION
BUSINESS INCORPORATION]

*

AFFIDAVIT AGREEMENT
NOTICES

In, Re: RULE 32 PENDING

DISTRICT ATTORNEY SPENCER WALKER
P.O. BOX 850
GROVE HILL ALABAMA 36451

I MARCUS TATE MAKE THIS AFFIDAVIT IN GOOD FAITH ON MY OWN FREE
WILL

DID NOBODY FORCE ME TO MAKE THIS AFFIDAVIT.

THIS AFFIDAVIT IS IN SUPPORT TO RESOLVE THE CASE NO. CC-99-169-M
THAT I WAS PUT IN ALABAMA DEPARTMENT OF CORRECTIONS PRISON ILLEGAL

SUBJECT MATTER

(A). IF THE DISTRICT ATTORNEY OFFICE AND CLARKE COUNTY CIRCUIT
JUDGE AND COURT WILL HONOR THE PENDING POSTCONVICTION RULE
32 IN CASE NO. CC-99-169-M AND ABOLISH THE CONVICTION
AND SENTENCE ORDER AND SET MR. TATE FREE BACK TO HIS
FAMILY AND COMPENSATE HIM \$ 1. MILLION DOLLARS

I. MARCUS TATE SWEAR TO AFFIRM I WILL NOT SUE THE
DISTRICT ATTORNEY OFFICE FOR KIDNAPPING ME IN CASE NO.
CC-99-169- M

(B). MR. SPENCER WALKER YOU KNOW I, AM INNOCENT OF THIS CASE
CAUSE YOU REPRESENT BOTH C/O DEFENDANTS WITNESS
LORENZO SMITH AND NAKIA McCASKEY

ELMORE COUNTY
STATE OF ALABAMA
NOTARY PUBLIC

Marcus Tate
MARCUS TATE AIS# 180664

P.O. BOX 56 ELMORE AL, 36025

SWORN TO AND SUBSCRIBED BEFORE ME THIS DAY 16th MONTH NOVEREMBER
2006

NOTARY NAME: James H. Lindsey Jr. COMMISSION EXPIRES: 1/28/08
Elmore, AL

FILED
CIRCUIT CLERK'S OFFICE
CLARKE COUNTY, ALABAMA
2006 NOV 20 PM 2:56
MAYOR BLUNSON
CIRCUIT CLERK

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00025

IN THE CIRCUIT COURT OF CLARKE COUNTY, ALABAMA

STATE OF ALABAMA,
Respondent,

vs.

MARCUS TATE,
Petitioner.

*
*
*
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*
*
*
*

CASE NO: CC-1999-169

FILED
01/26/2007
JAY DUKE
Circuit Clerk

RESPONSE

COMES NOW the State of Alabama, by and through its Assistant District Attorney, Joe H. Thompson, and in response to the petition of Marcus Tate for post conviction relief under Rule 32 of the Alabama Rules of Criminal Procedure, shows the following:

ALLEGATIONS OF PETITIONER AS UNDERSTOOD BY THE STATE

- 32(a) ☒ Petitioner alleges that the Constitution of the United States or of the State of Alabama requires a new trial, a new sentencing proceeding, or other relief stating specifically as follows:
1. ☐ Petitioner contends the conviction was obtained by plea of guilty which was unlawfully induced or not made voluntarily with the understanding of the nature of the charge and the consequences of the plea.
 2. ☒ Petitioner claims the conviction was obtained by use of coerced confession.
 3. ☐ Petitioner contends the conviction was obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
 4. ☐ Petitioner claims the conviction was obtained by use of evidence obtained pursuant to an unlawful arrest.
 5. ☐ Petitioner contends the conviction was obtained by a violation of the privilege against self-incrimination.
 6. ☐ Petitioner claims the conviction was obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

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7. ☐ Petitioner contends the conviction was obtained by a violation of the protection against double jeopardy.
8. ☐ Petitioner claims the conviction was obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled
9. ☐ Petitioner contends he was denied effective assistance of counsel at trial and on appeal.
- (b) ☒ The court was without jurisdiction to render the judgment or to impose the sentence.
- (c) ☐ The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.
- (d) ☐ Petitioner is being held in custody after his sentence has expired.
- (e) ☒ Newly discovered material facts exist which require that the conviction or sentence be vacated by the court because:
- The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and
 - The facts are not merely cumulative to other facts that were known; and
 - The facts do not merely amount to impeachment evidence; and
 - If the facts had been known at the time of trial or sentencing, the result would probably have been different; and
 - The facts establish that the petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.
- (f) ☐ The petitioner failed to appeal within the prescribed time and that failure was without fault on the petitioner's part.

STATE'S RESPONSE

- ☐ Petitioner is precluded from raising a second or successive petition on the same or similar grounds pursuant to Al. Crim. P. 32.2 (b).

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- ☒ Petitioner is precluded from raising petition for post-conviction relief in that the limitations period of one year for filing has run since his conviction on November 2, 1999, pursuant to Al. Crim. P. 32.2 (c).
- ☐ The Petitioner is precluded from raising this petition for post-conviction relief in that it challenges multiple judgments entered in more than a single trial or guilty-plea proceeding pursuant to Al. Crim. P. 32.1.

The State of Alabama denies each and every allegation of petitioner as set forth in the above allegations of petitioner as understood by the state. Further, as to said allegations by petitioner, the State of Alabama alleges the following:

As to Petitioner's claim 32(a)(2):

- ☐ Is due to be denied because the allegations may still be raised on direct appeal under the Alabama Rules of Appellate Procedure or by post-trial motion under Rule 24. Al. Crim. P. 32.2 (a)(1).
- ☐ Is due to be denied because the allegations were or could have been raised or addressed at trial. Al. Crim. P. 32.2 (a)(2), (3).
- ☐ Is due to be denied because the allegations were or could have been raised on appeal. Al. Crim. P. 32.2 (a)(4),(5).
- ☒ Is due to be denied because the allegations are not sufficiently specific. Petitioner offers no specific facts or evidence which support these allegations. Al. Crim. P. 32.6. Further, Petitioner's claim 32(a)(2) is untimely in that the limitations period of one year for filing has run since his conviction on November 2, 1999, pursuant to Al. Crim. P. 32.2 (c)

As to Petitioner's claim 32(b):

- ☐ Is due to be denied because the allegations may still be raised on direct appeal under the Alabama Rules of Appellate Procedure or by post-trial motion under Rule 24. Al. Crim. P. 32.2(a)(1).
 - ☐ Is due to be denied because the allegations were or could have been raised or addressed at trial. Al. Crim. P. 32.2 (a)(2), (3).
 - ☐ Is due to be denied because the allegations were or could have been raised on appeal. Al. Crim. P. 32.2 (a)(4), (5).
 - ☒ Is due to be denied because the allegations are not sufficiently specific. Petitioner offers no specific facts or evidence which support these allegations. Al. Crim. P. 32.6.
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As to Petitioner's claim 32(e):


- ☐ Is due to be denied because the allegations may still be raised on direct appeal under the Alabama Rules of Appellate Procedure or by post-trial motion under Rule 24. Al. Crim. P. 32.2(a)(1).
- ☐ Is due to be denied because the allegations were or could have been raised or addressed at trial. Al. Crim. P. 32.2 (a)(2),(3).
- ☐ Is due to be denied because the allegations were or could have been raised on appeal. Al. Crim. P. 32.2 (a)(4),(5).
- ☒ Is due to be denied because the allegations are not sufficiently specific. Petitioner offers no specific facts or evidence which support these allegations. Al. Crim. P. 32.6.

PRAYER FOR RELIEF

The State of Alabama respectfully requests that each of the Petitioner's claims be denied. The State of Alabama avers that no material issue of facts or law exists which would entitle the Petitioner to relief under Rule 32 and that no purpose would be served by any further proceedings.

In the alternative and without waiving the procedural grounds stated herein, the State of Alabama denies each and every allegation and demands for strict proof thereof.


Submitted this the 24th day of January, 2007.



Joe H. Thompson
Assistant District Attorney
First Judicial Circuit

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading on the Petitioner on the 24th day of January, 2007, by U.S. Mail.



Joe H. Thompson

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00029

IN THE CIRCUIT COURT OF CLARKE COUNTY, ALABAMA

STATE OF ALABAMA,
Respondent,

vs.

MARCUS TATE,
Petitioner.*
*
*
*
*
*
*
*

CASE NO. CC-1999-169

FILED
01/26/2007
JAY DUKE
Circuit ClerkORDER

The Court, having reviewed the record, the pleadings, and the exhibits, is of the opinion that the Rule 32 Petition of Marcus Tate for post-conviction relief is due to be denied based on the following grounds:

FINDINGS

- ☐ Petitioner is precluded from raising a second or successive petition on the same or similar grounds pursuant to Al. Crim. P. 32.2 (b).
- ☒ Petitioner is precluded from raising petition for post-conviction relief in that the limitations period for filing has run pursuant to Al. Crim. P. 32.2 (c).
- ☐ The Petitioner is precluded from raising this petition for post-conviction relief in that it challenges multiple judgments entered in more than a single trial or guilty-plea proceeding pursuant to Al. Crim. P. 32.1.

Specifically, in regards to Petitioner's claim 32(a)(2):

- ☐ Is denied because the allegations may still be raised on direct appeal under the Alabama Rules of Appellate Procedure or by post-trial motion under Rule 24. Al. Crim. P. 32.2 (a)(1).
- ☐ Is denied because the allegations were or could have been raised or addressed at trial. Al. Crim. P. 32.2 (a)(2),(3).
- ☐ Is denied because the allegations were or could have been raised on appeal. Al. Crim. P. 32.2 (a)(4),(5).
- ☒ Is denied because the allegations are not sufficiently specific. Petitioner offers no specific facts or evidence which support these allegations. Al. Crim. P. 32.6.

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Futher, Petitioner's claim 32(a)(9) is untimely in that the limitations period of one year for filing has run since his conviction on November 2, 1999, pursuant to Al. Crim. P. 32.2 (c).

In Regards to Petitioner's claim 32(b):


- ☐ Is denied because the allegations may still be raised on direct appeal under the Alabama Rules of Appellate Procedure or by post-trial motion under Rule 24. Al. Crim. P. 32.2 (a)(1).
- ☐ Is denied because the allegations were or could have been raised or addressed at trial. Al. Crim. P. 32.2 (a)(2),(3).
- ☐ Is denied because the allegations were or could have been raised on appeal. Al. Crim. P. 32.2 (a)(4),(5).
- ☒ Is denied because the allegations are not sufficiently specific. Petitioner offers no specific facts or evidence which support these allegations. Al. Crim. P. 32.6.

In Regards to Petitioner's claim 32(e):

- ☐ Is denied because the allegations may still be raised on direct appeal under the Alabama Rules of Appellate Procedure or by post-trial motion under Rule 24. Al. Crim. P. 32.2 (a)(1).
- ☐ Is denied because the allegations were or could have been raised or addressed at trial. Al. Crim. P. 32.2 (a)(2),(3).
- ☐ Is denied because the allegations were or could have been raised on appeal. Al. Crim. P. 32.2 (a)(4),(5).
- ☒ Is denied because the allegations are not sufficiently specific. Petitioner offers no specific facts or evidence which support these allegations. AL Crim. P. 32.6.

Now therefore it is ordered that the petition of Marcus Tate for post-conviction relief under Rule 32, Alabama Rules of Criminal Procedure is hereby denied.

This the 26th day of January, 2007.


Circuit Judge

CC: DA
Deft

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00031

IN THE CIRCUIT COURT OF Clarke COUNTY, ALABAMA

Maurice T. Lee *

PETITIONER, *

VS. *

CASE NO: CC-99-169-M *

STATE OF ALABAMA, *

RESPONDENT. *

NOTICE OF APPEAL

FILED
01/25/07
JAL DUKE
Circuit Clerk

Comes now the Petitioner in the above styled matter, and give due Notice Of Appeal to the Court of Criminal Appeals for the State of Alabama from the decision of the trial court's entry of judgment on the 24 day of Jan, 2007, whereby the trial court denied the Petitioner's Petition for Relief.

Done on this the 24 day of Jan, 2007.

Respectfully Submitted,

Maurice T. Lee
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the Circuit Court Clerk of Clarke County, Alabama by placing a copy of the same in the United States mail properly stamped and addressed on this the 24 day of Jan, 2007.

Maurice T. Lee
Petitioner

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00032

IN THE CIRCUIT COURT OF CLARKE COUNTY
STATE OF ALABAMA

MARCUS TATE

/s/

C/O DEFENDANTS

WITNESS

vs. PETITIONER, S

CASE NO. CC-99-169-M

STATE OF ALABAMA
RESPONDENT

APPEALS

NOTION OF ALABAMA SUPREME COURT TO UPHOLD DEFENDANT ISSUES
FOR TRIAL COURT RELIEF ON POST CONVICTION RULE 32 RELIEF

COME NOW THE DEFENDANT AND UPHOLD ISSUES FOR RELIEF BY THE
ALABAMA SUPREME COURT TO DEMAND AND REVERSE AND VACATE
ILLEGAL CONVICTION AND SET ASIDE

ISSUES

- (A). VERD DEFECTIVE INDICTMENT
- (B). INEFFECTIVE ASSISTANCE OF TRIAL COURT COUNSEL
- (C). CORRUPT CONFESSION AND PERJURY OF WITNESS BY THE STATE
ROBERT KEANEY AND SHERIFF OFFICER LARRY COLSTON
- (D). UNLAWFULLY IMPRISONMENT UNDER 13A-6-42 Citing 13A-6-43
KIDNAPPING PURSUANT FEDERAL STATUTES 18 USCS 1201
STATUTES PROCEDURES
- (E). DEFENDANT PLEAD WAS AT TRIAL COURT NOT GUILTY
- (F). DEFENDANT PLEAD WAS THE 5th AMENDMENT
- (G). THE ISSUES ABOVE DOSE HAS TIME LIMITATIONS AND CAN NOT
BE PROCEDURE BARRED BY THE U.S. SUPREME COURT LAND MARK
CASE, S
- (H). THE DEFENDANT ALSO SUPORNA THE U.S. CONSTITUTIONS UPON
THIS RULE 32 POST CONVICTION RELIEF AT A-2-CRIM-P 32.9
(a)(b)(c)(d) EVIDENTIARY HEARING

RELIEF

WHEREFORE THE DEFENDANT DEMANDS RELIEF THAT DEEM UNDER THE
U.S. CONSTITUTIONS

CERTIFICATION OF SERVICE

PETITIONER SWEAR HE HAS SERVED THE FOLLOWING PARTIES BY U.S.
HAND MAIL DAY 24 MONTH JAN 2007

ALABAMA SUPREME COURT, AL, ATTORNEY GENERAL TROY KING
DISTRICT ATTORNEY SPENCER WALKER OFFICE CIRCUIT JUDGE OFFICE
CLERK OF COURT OFFICE

Marcus Tate

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State of Alabama Unified Judicial System Form ARAP- 26 (front) 8/91	COURT OF CRIMINAL APPEALS DOCKETING STATEMENT	Criminal Appeal Number <u>CC - 99-169-M</u>
---	--	--

A. GENERAL INFORMATION:

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF CLARKE COUNTY
MARCUS TATE #180664, Appellant

V. STATE OF ALABAMA ☐ MUNICIPALITY OF _____

Case Number <u>CC-99-169-M</u>	Date of Complaint or Indictment <u>1998</u>	Date of Judgment/Sentence/Order <u>NOV 21 1998</u>
Number of Days of Trial/Hearing <u>ONE</u> Days	Date of Notice of Appeal Oral: _____	Written: <u>1-24-07</u>

Indigent Status Requested: ☒ Yes ☐ No Indigent Status Granted: ☒ Yes ☐ No

B. REPRESENTATION:

Is Attorney Appointed or Retained? ☒ Appointed... ☐ Retained. If no attorney, will appellant represent self? ☐ Yes ☐ No

Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) <u>ATTORNEY #180664</u>		Telephone Number <u>251-</u>	
Address <u>3800 GK Fountain</u>	City <u>ATMORE</u>	State <u>Ala</u>	Zip Code <u>36503</u>

C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant <u>LORENZO Smith 334-636-0911</u>	Case Number
Codefendant <u>NAKIA McCaskey 334-636-0911</u>	Case Number
Codefendant <u>ATTORNEY Ben HOWARD Kelley</u>	Case Number <u>251-246-3012</u>

D. TYPE OF APPEAL: Please check the applicable block.

1 <input type="checkbox"/> State Conviction	4 <input type="checkbox"/> Pretrial Order	7 <input type="checkbox"/> Juvenile Transfer Order	10 <input type="checkbox"/> Other (Specify) _____
2 <input checked="" type="checkbox"/> Post-Conviction Remedy	5 <input type="checkbox"/> Contempt Adjudication	8 <input type="checkbox"/> Juvenile Delinquency	
3 <input type="checkbox"/> Probation Revocation	6 <input type="checkbox"/> Municipal Conviction	9 <input type="checkbox"/> Habeas Corpus Petition	

E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

1 <input type="checkbox"/> Capital Offense - § _____	6 <input type="checkbox"/> Trafficking in Drugs - § _____	11 <input type="checkbox"/> Fraudulent Practices - § _____
2 <input type="checkbox"/> Homicide - § _____	7 <input type="checkbox"/> Theft - § _____	12 <input type="checkbox"/> Offense Against Family - § _____
3 <input type="checkbox"/> Assault - § _____	8 <input type="checkbox"/> Damage or Intrusion to Property - § _____	13 <input type="checkbox"/> Traffic - DUI - § _____
4 <input checked="" type="checkbox"/> Kidnapping/Unlawful Imprisonment - § <u>13A-6-42</u>	9 <input type="checkbox"/> Escape - § _____	14 <input type="checkbox"/> Traffic - Other - § _____
5 <input type="checkbox"/> Drug Possession - § _____	10 <input type="checkbox"/> Weapons/Firearms - § _____	15 <input checked="" type="checkbox"/> Miscellaneous (Specify): <u>Burglary</u> - § <u>13A-7-6</u>

F. DEATH PENALTY:
Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☐ No

G. TRANSCRIPT:

1. Will the record on appeal have a reporter's transcript? ☒ Yes ☐ No

2. If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. _____ (Date)

3. If the answer to question "1" is "No":

(a) Will a stipulation of facts be filed with the circuit clerk? ☒ Yes ☐ No

(b) Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☒ Yes ☐ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

Form ARAP- 26 (back) 8/91

COURT OF CRIMINAL APPEALS DOCKETING STATEMENT

H. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCrP)):

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

K. SIGNATURE:

Date

Signature of Attorney/ Party Filing this Form

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State of Alabama Unified Judicial System Form ARAP-1C 8/91	REPORTER'S TRANSCRIPT ORDER -- CRIMINAL See Rules 10(c) and 11(b) of the Alabama Rules of Appellate Procedure (A.R. App.P.)	Criminal Appeal Number <u>CC - 99-168</u>
--	--	--

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF CLARKE COUNTY
MARCUS TATE & WITNESS, Appellant

V. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF BROOK HILL ALA

Case Number <u>CC-99-168-M</u>	Date of Judgment/Sentence/Order <u>NOV-21-1999</u>
Date of Notice of Appeal Oral: _____ Written: <u>1-24-07</u>	Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

MARCUS TATE 1-24-07 MARCUS TATE
 Signature Date Print or Type Name

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED. Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R. App.P.)):**MARK PROCEEDINGS REQUESTED:****COURT REPORTER(S)**

- A. ☐ **TRIAL PROCEEDINGS** - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.
- B. ☐ **ORGANIZATION OF THE JURY** - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs (See Rule 19.4, ARCP)
- C. ☐ **ARGUMENTS OF COUNSEL** - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs (See Rule 19.4, ARCP)

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

ADDITIONAL PROCEEDINGS REQUESTED	DATE	COURT REPORTER(S)
D. _____	_____	_____
E. _____	_____	_____
F. _____	_____	_____
G. _____	_____	_____

IMPORTANT NOTICE: The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R.App.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS

Signature _____ Date _____ Print or Type Name _____

DISTRIBUTION: Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) the District Attorney, (3) the Attorney General or the municipal prosecutor in lieu of the District Attorney and the Attorney General if the appeal is from a municipal case.

Motion For Sentence Modification
Pursuant to Act 2001-977

(please print)

Defendant MARCUS TATE Case No. CC-99-169-M
Inmate AIS# 180664 Sentence Life
County of Conviction CLARKE Sentencing Judge Ramond McPhearson
Date of Sentence Nov 2 1999 Date of Admission FEB 2nd / 2007

Comes now the defendant in the above styled case and petitions the court to reconsider the sentence previously imposed under Alabama's habitual felony offender statute, as amended by Act 2000-759, Act 2001-977, and pursuant to the Alabama Supreme Court's holding in Ex parte Kirby, 2004 WL 1909343 (Ala. 8/27/04). I swear and affirm that the following facts are true and correct.

FILED
02/05/09
JAY DUKE
Circuit Clerk

Last (Current) Conviction Offense

Burglary 2nd

Most Serious Conviction Offense Burglary 2nd

Date Sentenced Under the Habitual Felony Offender Statute Unknown

(Must be prior to 5/26/2000)

I swear and affirm that:

☐ I am currently serving a prison sentence of "Life without the possibility of parole," having been convicted of Class A Felony and sentenced under the Habitual Felony Offender Act, prior to its amendment by Act 2000-759(effective 5/25/2000), and that none of my prior convictions were for a Class A felony.

OR

☒ I am currently serving a prison sentence of "Life imprisonment," having been convicted of a Class B Felony and sentenced under the Habitual Felony Offender Act, prior to its amendment by Act 2000-759 (effective 5/25/2000).

List all prior adult felony convictions, including out-of-state convictions (must be three or more)

1. Crime Youth offender Date _____ Place of Conviction CLARKE
2. Burglary 3rd Tool 1997 CLARKE
3. Burglary 2nd May 12 1998 CLARKE
4. _____
5. _____

Sworn to and subscribed before me,

[Signature]
Notary Public

2/1/07

[Signature]
Signature of Defendant

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00037

IN THE CIRCUIT COURT OF CLARKE COUNTY
STATE OF ALABAMA

STATE OF ALABAMA
Respondent

*

vs.

*

CC-1999-169

Marcus Tate
Petitioner

*

*

FILED
02/05/07
JAY DUKE
Circuit Clerk

PURSUANT
OBJECTION
TO CIRCUIT JUDGE DENIAL
OF POST CONVICTION OF
RULE 32 MOTION FOR RELIEF

(A). THE COURT STATED TIME LIMITATION IS DUE

(a) FACTS UNDER THE UNITED STATES FEDERAL CONSTITUTION
AMENDMENT 5th, 4th, 8th, 9th, 13th, 14th AMENDMENTS

THE PETITIONER IS NOT BARRED TO PROVE HIS INNOCENT
WITH TWO AFFIDAVITS OF C/O DEFENDANTS WITNESS
LORENZO SMITH AND NAKIA McCASKEY
THAT DISTRICT ATTORNEY ROBERT KEAHEY AND SHERIFF
LARRY COLSTON

(1). MADE AND THREATEN THEM TO COMMIT PERJURY
ON THE WITNESS STAND BY [COERCED CONFESSION]

(2). THAT ATTORNEY BEN H. KELLY MADE IT KNOWN TO
THE TRANSCRIPT RECORDS CC-99-169-M
SO THE WRATH WOULD NOT FALL ON HIM
WITH CRIMINAL CHARGES OF

(a). UNLAWFUL IMPRISONMENT
(b). KIDNAPPING 1st DEGREE

(B). THE PETITIONER WILL MAKE SURE THE GOVERNOR, et al WILL GET
THEIR HANDS ON THE TWO AFFIDAVITS FROM BOTH C/O DEFENDANTS
WITNESS ALONE WITH PETITIONER ATTORNEY AT LAW PERSONAL

FEDERAL INDICTMENTS

(C). THE PETITIONER AND LAWYER IS ASKING FOR FEDERAL INDICTMENTS
AND WARRANTS FOR ARREST FOR ALL PARTIES THAT CONSPIRACED
AND AID AND ABIDED IN THIS CRIME AGAINST THE STATE OF ALABAMA

10

00038

JUDGE BAXTON SWORNED IN TO PROTECT
THE U.S. CONSTITUTIONS

(D). Facts see Article VI: This Constitution, and the laws of the United States WHICH SHALL BE MADE in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the JUDGES in every States shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary Notwithstanding.

(E). MR. BAXTON YOU WAS SWORE TO PROTECT MY RIGHTS AND TO UPHOLD THE U.S. SUPREME LAWS OF THE LAND

(F). SO YOU SIR CAN BE HELD FOR AIDING AND ABIDING TO CRIMINAL CHARGES OF KIDNAPPING
13A-6-43 Citing 18 USCS 1201

CONVICTED ILLEGAL

(G). MY PLEAD WAS THE 5th SIR

(H). MY PLEAD ALSO WAS NOT GUILTY SIR

(I). THE STATE D.A. AND SHERIFF USED CORECED CONFESSION AND PERJURY TESTIMONY WITH BOTH C/O DEFENDANTS WITNESS TO OBTAIN AN ILLEGAL CONVICTION

ATTORNEY BEN H. KELLY
PUT IT ON NOTICES
IN TRANSCRIPT RECORDS

(J). ATTORNEY BEN H. KELLY PUT IT ON NOTICES IN TRANSCRIPT RECORDS THAT BOTH C/O DEFENDANTS WAS MADE THREATEN AND COERCED BY THE STATE D.A. AND SHERIFF TO COMMITT PERJURY ON THE WITNESS STAND TO OBTAIN A CONVICTION ILLEGAL

CERTIFICATION SERVICE

I PETITIONER SWEAR I HAVE SERVED THE CLERK OF COURT AND JUDGE OFFICE AT P.O. BOX 912 GROVE HILL ALABAMA 36451
DONE THIS DAY 16th MONTH FEB 2007

Marcus Tate
MARCUS TATE AIS# 180664
3800 GK FOUNTAIN
ATMORE ALABAMA 36503

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00039

IN THE STATE OF ALABAMA CRIMINAL COURT APPEALS

MARCUS TAITÉ
DEFENDANT

vs.

STATE OF ALABAMA
CLARKE COUNTY CIRCUIT COURT
PLAINTIFF

CC-99-169-M

CR-99-8781

CR-06-0868

PURSUANT

WRIT OF MANDAMUS PETITIONIn, Re: OBJECTION TO POSTCONVICTION
ON RULE 32

/&/ MOTION FOR APPEALS

COME NOW THE PLAINTIFF AND MOVE THIS HONORABLE COURT OF ALABAMA
CRIMINAL COURT APPEALS AND (ORDER) EVIDENTIARY HEARING AND COURT
ORDER SUBPOENA BOTH C/O DEFENDANTS WITNESS AND THE TRIAL COURT
TO ANSWER THIS MANDAMUS OF DEFENDANT FOR GOOD REASON BY LAW
AS STATED BELOW:

REASONSFACTS

(A). THIS LIFE CONVICTION WAS OBTAINED BY [1]. COERCED CONFESSION
[2]. PERJURY, [3]. WHERE DISTRICT ATTORNEY et, al" MADE AND THREAT
EN, ... BOTH OF MY FRIENDS [4]. LORENZO SMITH [5]. NAKIA
McCASKEY ON JURY STAND NOV/2/1999

FACTS SEE TRANSCRIPT PAGE NO. [225] AND ARMED LOADED AFFIDAVITS
ATTACHED.

(B). [1]. FACTS MY PLEAD WAS NOT GUILTY [2]. MY PLEAD ALSO WAS THE
FIFTH AMENDMENT OF CONSTITUTION RIGHTS

(C). THE DEFENDANT DID NOT TESTIFY IN TRIAL COURT OF NOV/2/1999

(D). THE DEFENDANT HAVE TWO SWORN AFFIDAVITS OF BOTH C/O DEFENDANTS
WITNESS [1]. LORENZO SMITH AND [2]. NAKIA McCASKEY
STATING I DID NOT COMMIT. THE CRIME CC-99-169-M

"1"

FILED
CIRCUIT CLERK'S OFFICE
CLARKE COUNTY ALABAMA
2007 MAR 18 4:45
JANET E. CREEK

12

00040

- (E). THE DEFENDANT HAS ALSO PUT NOTICES OF APPEALS SEE ATTACHED EXHIBIT [10].
- (F). THE CLARKE COUNTY CIRCUIT COURT HAS FAILED TO ANSWER AND FILE NOTICES OF APPEALS WITH ALABAMA CRIMINAL COURT APPEALS.

SUBJECT

- (G). THE DEFENDANT BRINGS THIS MANDAMUS PETITION SEEKING RELIEF THAT THE COURT WILL BE(ORDERED) TO ANSWER PETITIONER POST CONVICTION RULE 32 MOTION AND GIVE DEFENDANT AN EVIDENTIARY HEARING, AND SET HIM FREE
- (H). THE COURT HAS FAILED TO ANSWER DEFENDANT OBJECTION TO POST CONVICTION RULE 32 MOTION SEE CLERK OF COURT FILES

ACLU LAW FIRM LAWYERS

- (I). THE DEFENDANT HAS CONTACTED(ACLU) LAW FIRM OUTTA NEW YORK NEW YORK AND READY TO HIRE THESE LAWYERS
- AND FORWARDING ALL THE FACTS TO BRING CHARGES OF KIDNAPPING AND UNLAWFULLY IN PRISONMENT AND NEWS MEDIA ATTENSION CNN NEWS ATLANTA GEORGIA, PURSUANT 13A-6-42, 13A-6-43 AND 18 USCS 1201 STATUTES PROCEDURES
-
- BOTH C/O DEFENDANTS WITNESS MY FRIENDS WILL TELL THE WHOLE TRUTH SO HELP THEM GOD,
-

RELIEF

WHEREFORE THE DEFENDANT IS INTITLE TO RELIEF UNDER THE U.S. CIVIL RIGHTS CONSTITUTION OF THESE STATES OF AMERICAN

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00041

RELIEF

WHEREFORE THE DEFENDANT IS INTITLE TO RELIEF UNDER THE U.S.
CIVIL RIGHTS CONSTITUTIONAL AMENDMENTS OF THESE STATES,

FACTS AFFIDAVITS ATTACHED

SEE [EXAMPLE FACTS AFFIDAVITS OF C/O DEFENDANTS WITNESS

FULLY LOADED AND ON CENTER TARGETS]

CERTIFICATION OF SERVICE

I DEFENDANT SWEAR TO AFFIRM I HAVE SERVED THE WRIT OF MANDAMUS
UPON THE FOLLOWING PARTIES BELOW BY THE U.S. POSTAL MAIL
SERVICE PREPAID MAILING STAMPS HAND DELIVERY TO FOLLOWING PARTIES
THIS DAY 5th MONTH MARCH 2007

Marcus D. Taite

CC-COPIES TO FIRMS

MARCUS TAITE AIS# 180664 FILES

3800 GK Fountain
ATMORE Ala. 36503

ACLU CIVIL LAW FIRM STATE OF NEW YORK NY,

CIRCUIT COURT CLERK JAY DUKES P.O. BOX 912 GROVE HILL ALA, 36451

DISTRICT ATTORNEY SPENCER WALKER P.O. BOX 850 GROVE HILL AL, 36451

HON. JUDGE THOMAS BAXTER P.O. BOX 912 BROVE HILL AL, 36451

ATTORNEY GENERAL TROY KING 11 SOUTH UNION STREET MONTGOMERY AL, 36104

STATE OF ALABAMA GOVERNOR BOB RIPLEY MONTGOMERY AL, 36104

ALABAMA CRIMINAL COURT APPEALS 300 DEXTER AVENUE MONTGOMERY AL, 36104

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Obo 42

IN THE CIRCUIT COURT OF CLARK COUNTY
state of alabama

MARCUS TAITE
DEFENDANT

vs.
STATE OF ALABAMA
PLAINTIFF

CC-99-169-M
APPEAL NO. CR-99-0701

CR-04-0868

(NAKIA MCCASKEY AFFIDAVIT)

C/O DEFENDANT WITNESS AFFIDAVIT FACTS

MY NAME IS NAKIA MCCASKEY I, AM OVER THE AGE 21 AND CAN STAND
TRIAL AND ALLEGE THE FACTS IN CASE NO. CC-99-169-M
AND CASE NO. CR-99-0701 THAT DEFENDANT MARCUS TAITE IS INNOCENT OF
THE CHARGE BURGLARY SECOND DEGREE 13A-7-6

INCIDENT LOCATION

(A). MARCUS TAITE NEVER COMMITTED NO BURGLARY ON DANNEY JOE SIMS
HOME OLD HIGHWAY FIVE SOUTH OF THOMASVILLE ALABAMA
WE WAS "HARASS" AND "THREATEN" BY DISTRICT ATTORNEY ROBERT KEAGNEY
AND SHERIFF LARRY COLSTON TO COMMIT PERJURY IN TATE JURY TRIAL
TO GET HIM A LIFE CONVICTION WRONGFULLY AND ILLEGALLY.

THE FACTS IS STILL IN TRIAL COURT TRANSCRIPT PAGE NO. 233

THE STATE TOLD ME AND MY COUSIN LORRENDO SMITH IF WE DID NOT SAY
TAITE WAS INVOLVED HE WAS GOING TO GIVE US A LIFE SENTENCE BUT HE
SAID IF WE COMMIT TO HIS DEAL HE WOULD GIVE US FIVE YEARS ON
PAROLE AND PROBATION

AFFIDAVIT

STATE OF ALABAMA
NOTARY PUBLIC

NAKIA MCCASKEY D/A
C/O DEFENDANT WITNESS

Sworn to and subscribed before me this day of _____ month _____
and year 2008.

NOTARY _____

COMMISSION EXPIRES: _____

ARMED EXHIBIT #1 Affidavit

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00043

IN THE CIRCUIT COURT OF CLARKE COUNTY
STATE OF ALABAMA

MARCUS TAITE
DEFENDANT

vs.

STATE OF ALABAMA
PLAINTIFF

CASE NO. CC-99-169-M
APPEAL NO. CR-99-0781

CR-06-0858

C/O DEFENDANT LORENZO SMITH
AFFIDAVIT STATEMENTS

MY NAME IS LORENZO SMITH I, AM OVER THE AGE 21 AND CAN STAND TRIAL AND ALLEGE THE FACTS IN CASE NO. CC-99-169-M AND CR-99-0781 THAT DEFENDANT MARCUS TAITE IS INNOCENT OF THE CHARGE BUGLARY SECOND DEGREE 13A-7-6

INCIDENT LOCATION

MARCUS TAITE NEVER COMMITTED NO BUGLARY ON DANNY JOE SIMS HOME ON OLD HWY FIVE SOUTH WE WAS "MADE" AND "THREATEN" BY DISTRICT ATTORNEY BOBBY ROBERT KEAHEY AND SHERIFF OFFICER LARRY COLSTON TO COMMITT "PERJURY" IN THE TRIAL TO GET HIM A LIFE SENTENCE CONVICTION WRONGFULLY

STATE OF ALABAMA DEAL BARGAIN

THE STATE TOLD ME AND MY COUSIN NAKIA MCCASKEY IF WE DID NOT SAY TAITE WAS INVOLVED HE WAS GOING TO GIVE US A LIFE SENTENCE BUT HE SAID IF WE COMMITT TO HIS DEAL HE WOULD GIVE US FIVE YEARS ON PAPERS AND PROBATION.

AFFIDAVIT

STATE OF ALABAMA
NOTARY PUBLIC

LORENZO SMITH C/O DEFENDANT
WITNESS

Sworn to and subscribed before me this day of _____ MONTH
AND YEAR 200, _____

NOTARY: _____

COMMISSION EXPIRES: _____

ARMED Exhibit # 2 Affidavit

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00044

AP 14-3 Certificate of Completion and Transmittal of Record on Appeal by Trial Clerk

Printed and for Sale by Roberts & Son, Birmingham

**CERTIFICATE OF COMPLETION AND TRANSMITTAL
OF RECORD ON APPEAL BY TRIAL CLERK**

MARCUS ORLANDA TATE

Appellant

V.

State of Alabama
Appellee

TO: The Clerk of the Court of
Criminal Appeals of Alabama

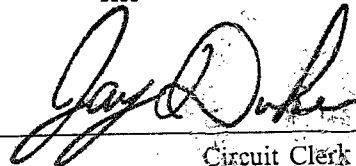
Case No. CC-1999-169.61

Date of Notice of Appeal 01/25/2007

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of 44 pages) (volumes of 200 pages each and one volume of pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.

DATED this 8th day of MARCH, ~~19~~²⁰07.



Circuit Clerk

CLARKE

County

77

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